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LETTER DATED 26 MAY 1994 FROM THE PERMANENT REPRESENTATIVE OF CROATIA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

In accordance with instructions from my Government, I submit herewith a letter, dated 17 May 1994, from Mr. Bozo Marendic, my Government's head of delegation to the Working Group on Succession Issues of the International Conference on the Former Yugoslavia in Geneva, addressed to Lord David Owen and Mr. Thorvald Stoltenberg, the Co-Chairmen of the International Conference, and a statement by the Croatian delegation at that Working Group.

Mr. Marendic states that the Croatian Government is dissatisfied with the course of the succession process which has been virtually "paralysed" and "the basic reason for the current state of affairs is the refusal by the representatives of Serbia and Montenegro (Federal Republic of Yugoslavia) to cooperate, as exemplified by their reservations about the whole work done so far on the inventory of assets and liabilities and insistence on their own notions about the succession procedure, which contradict the principles of international law, internal law and the real relationships in the former Yugoslavia".

My Government shall continue to keep the members of the Security Council informed regarding the recent developments in the peace process with respect to the Republic of Croatia, as it has already done in its letter of 4 May 1994 (S/1994/535) regarding the lack of progress by the Knin authorities in implementing the Zagreb cease-fire agreement of 29 March 1994; its letter of 16 May 1994 (S/1994/578) regarding the tragic development in Daruvar, United Nations protected area (UNPA) sector West, where five civilians were summarily executed by Serbian extremists; and its letter of 19 May 1994 (S/1994/595) regarding the recently outlined plans of the Serb authorities in Knin to integrate the occupied territory in the Republic of Croatia (UNPAs) into the legal system of the "Federal Republic of Yugoslavia (Serbia and Montenegro)."

May I request your assistance in circulating this letter and its attachment as a document of the Security Council.

(Signed) Mario NOBILO
Permanent Representative

Annex

Letter dated 17 May 1994 from the head of the delegation of the Republic of Croatia to the Working Group on Succession Issues of the International Conference on the Former Yugoslavia addressed to the Co-Chairmen of the International Conference

We regret being forced to reiterate our dissatisfaction with the course of the succession process, as expressed in the attached statement, which contains our assessment of the reasons behind the stalemate and our ideas of how to conduct the succession process in order to overcome the problems that have virtually paralysed the work of the Working Group on Succession Issues.

The basic reason for the current state of affairs is the refusal by the representatives of Serbia and Montenegro (Federal Republic of Yugoslavia) to cooperate, as exemplified by their reservations about the whole work done so far on the inventory of assets and liabilities and insistence on their own notions about the succession procedure, which contradict the principles of international law, internal law and the real relationships in the former Yugoslavia. They also refuse to recognize the Arbitration Commission of the Conference and its opinions which are largely in line with the more or less common positions of the other four successor States. It is obvious that the Yugoslav delegation does not want to carry out the succession or, forced as it is to discuss the issue, it comes up with views designed to protract the process to its advantage, because the bulk of the joint property is held by the Federal Republic of Yugoslavia.

Another important reason for the impasse is the insistence by the leadership of the Working Group on a consensus among the negotiating parties, thus giving a chance to the Yugoslav delegation to elaborate endlessly on its ideas about succession, which the other four delegations have repeatedly turned down as legally unfounded and unacceptable. What it all amounts to is a waste of time and an indefinite prolongation of the process, with serious doubts about the final outcome.

The recent announcement by Ambassador Jonsson that the leadership of the Working Group would play a more responsible role in conducting the succession affairs may speed up the process. We believe, however, that it is only the application of the principles of international law that can yield just results and that the international community should bring pressure to bear on the Federal Republic of Yugoslavia. We also believe that, given the present circumstances, any alleviation of economic sanctions imposed on the Federal Republic of Yugoslavia must be made dependent on the results achieved in the succession process.

Judging by the said initiative by Ambassador Jonsson, priority should be given to financial obligations, whereas other problems can be dealt with in global terms. Considering the present state of affairs and the problems of the newly created States in the area of the former Yugoslavia, it would be very useful in this connection also to give priority to the division of the frozen foreign currency reserves and the embassies, consulates and other property

abroad still held and used exclusively by the Federal Republic of Yugoslavia with no justification at all.

We hope that our attached statement and the present letter will help to accelerate the succession process and reach a just settlement.

For the delegation of the Republic of Croatia

Božo MARENDIĆ

Enclosure

Statement to the Working Group on Succession Issues of the International Conference on the Former Yugoslavia by the delegation of Croatia

The Federal Republic of Yugoslavia (Serbia and Montenegro) holds, without valid legal title, most of the federal property of the former Socialist Federal Republic of Yugoslavia and especially:

(a) Virtually all premises of the diplomatic and consular missions abroad, residences and apartments of heads of missions and other staff, along with the movable property;

(b) All assets of the former National Bank of Yugoslavia, including its monetary gold and hard currency reserves;

(c) Most of the arms and ammunition of the former Yugoslav People's Army;

(d) Joint property of former associations of enterprises in key infrastructure, transportation and communications, such as the Yugoslav Electric Power Industry, the Yugoslav Railways, the Yugoslav Post and Telecommunications, etc.;

(e) All the archives of the former Federation, with many documents not belonging to the State Archives.

Furthermore, most of the premises of the former Federal institutions and agencies are situated on the territory of the Federal Republic of Yugoslavia.

Sanctions under Chapter VII of the Charter of the United Nations were imposed on the Federal Republic of Yugoslavia by Security Council resolution 757 (1992) of 30 May 1992 mainly because of its involvement in the war in Bosnia and Herzegovina and Croatia. Yet only a fraction of the National Bank of Yugoslavia deposits in foreign banks has been frozen pursuant to that resolution. There is in practice no way of preventing the Federal Republic of Yugoslavia from spending the monetary gold and hard currency reserves for military purposes to assist the so-called Serbian Republic in Bosnia-Herzegovina and the Serbian Republic of Kraina in Croatia. Other successor States, however, have no control over or evidence of the fate of these assets.

The use of military assets of the former Socialist Federal Republic of Yugoslavia creates most serious problems. Since the fall of the Federal Army on 15 May 1991 under the actual control of the members of the former Federal Presidency from Serbia and Montenegro, that vast army, with all its weaponry, has been used in the aggression against democratically elected Governments: first in Slovenia (26 June 1991); then in Croatia (mid-August 1991); and finally in Bosnia and Herzegovina (since 7 April 1992). Following cease-fire agreements, most of that weaponry was transferred first from Slovenia to Croatia, then from Croatia to Bosnia and Herzegovina, and since the beginning of 1992 from Macedonia to Kosovo. These arms, including military aircraft, tanks

and heavy artillery, are now for the most part - without any legal title - in the possession of the armed forces of the so-called Serbian Republic of Kraina in Croatia and the Serbian Republic in Bosnia-Herzegovina. The siege of Sarajevo and other towns over the past 24 months was laid by means of these arms. Enormous civilian casualties and mass destruction of property were inflicted as a result of that. The three Serbian aircraft recently shot down by the North Atlantic Treaty Organization (NATO) forces in Bosnia-Herzegovina had been stationed in the Udbina airfield (occupied part of Croatia), which proves that even the militia in the Serbian Republic of Kraina has all sorts of weaponry received from the former Federal Army.

Financed and produced by contributions of citizens from all republics and autonomous provinces of the former Socialist Federal Republic of Yugoslavia, these arms are now used for killing and terrorizing mainly the non-Serbian population in the successor States, including the Federal Republic of Yugoslavia. The Federal Republic of Yugoslavia is not ready to negotiate seriously even the apportionment of the archives of the former Federation on the basis of principles and rules set forth in part III of the 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts (hereinafter "the 1983 Vienna Convention"). The Federal Republic of Yugoslavia even denies free access of other successor States to these archives, including those documents that are necessary for the process of State succession. When recently proposing to the Working Group on Succession Issues its preliminary inventory, the Federal Republic of Yugoslavia stated that it was "based on original documentation".

However, when the National Archives of Slovenia asked for some copies of documents from the Federal Archives in Belgrade, it was refused under the pretext that Slovenia is "a foreign State". Slovenian representatives in the Working Group on Succession Issues were advised to reach an ad hoc bilateral agreement with the Federal Republic of Yugoslavia on this and other unresolved issues.

That is how a vicious circle was deliberately created in regard to access to the archives of the former Federation, with the obvious purpose of hindering the process of State succession.

Gravely abusing the joint property of the former Federation for aggressive purposes against the territorial integrity and political independence of other successor States that have by now all become the United Nations Member States, the Federal Republic of Yugoslavia has not shown any readiness to cooperate in order to accomplish peacefully and in good faith the process of State succession of the former Socialist Federal Republic of Yugoslavia.

Since the establishment of the Working Group on Succession issues within the International Conference on the Former Yugoslavia, the main topic of dispute between the successor States on one side and the Federal Republic of Yugoslavia on the other is the State property to which the succession of States applies.

There are some well-established rules of international law in this field, based on long and established practice. State succession does not apply to the property, including rights and obligations, of natural and juridical persons.

Such property is safeguarded by the principle of acquired rights. The same relates to most of the property of the former "associated labour organizations" in the former Federation (see Arbitration Commission, opinion 14, para. 7).

State property of federal units, as well as property of other territorial entities, including communes and towns, is not the subject of succession either.

In case of the former Socialist Federal Republic of Yugoslavia, the succession of States applies only to the former State property owned by the Federation on the date(s) of succession of States for each successor State, according to federal laws in force at the time (1983 Vienna Convention, art. 8). Accordingly, the Arbitration Commission of the International Conference on the Former Yugoslavia stated in its opinion No. 14 of 13 August 1993: "The origin or initial financing of the property and any loans or contributions made in respect of it have no bearing on the matter."

The governing principle of the succession of States, which directly departs from the principle of sovereign equality of all States as contained in Article 2(1) of the Charter of the United Nations, is that of the equality of rights and duties between States in respect of international law (Arbitration Commission, opinion 9).

Whether or not a State claims to keep identity and continuity with the predecessor State, it has to respect the principle of equality of rights and duties, i.e., of assets and liabilities, of property and debts, in relation to all other States involved in the succession process. By virtue of this fundamental principle, the 1983 Vienna Convention sets forth basically the same rules on State succession in respect of State property, archives and debts in case of separation of parts of the territory of the predecessor State on one hand (arts. 17, 30 and 40) and in case of its dissolution on the other (arts. 18, 31 and 41).

The facts that the former Socialist Federal Republic of Yugoslavia has been dissolved and that it no longer exists; that the Federal Republic of Yugoslavia is a new State; and that none of the successor States, including the Federal Republic of Yugoslavia, can claim to be the sole continuing State of it were confirmed by opinions Nos. 8, 9 and 10 of the Arbitration Commission.

All these facts were further confirmed by Security Council resolutions 757 (1992) of 30 May 1992 and 777 (1992) of 19 September 1992, as well as by General Assembly resolution 47/1. They were also confirmed by decisions and the unanimous practice of most international organizations and institutions, including the specialized agencies of the United Nations. This means that the principles enshrined in articles 18, 31 and 41 of the 1983 Vienna Convention are relevant in case of succession of the former Socialist Federal Republic of Yugoslavia.

The Government of the Federal Republic of Yugoslavia is acting in serious breach of the aforementioned principle of equality of rights and duties between States in respect of international law, when asserting in its memorandum of 7 March 1994, inter alia, the following:

> "Although its position on international legal continuity is firmly legally based [sic], the Federal Republic of Yugoslavia agreed, as an act of good will and proceeding from the principle of equity, to renounce part of the Socialist Federal Republic of Yugoslavia's property in favour of the successor States ..." 1/

The above leaves no doubt that the Federal Republic of Yugoslavia considers itself, on no legal grounds whatsoever, not only as the continuing State of the Socialist Federal Republic of Yugoslavia but also as the sole owner of all the property of the former Federation. It does not recognize any legal rights or interests of the four other successor States in the process of State succession. Nevertheless, it agrees to grant them, ex gratia, as an act of good will, a fraction of that property, but on its own terms.

Its condition for a successful outcome of the negotiations is that the other successor States agree upon its own concept of State property of the former Federation. This concept is described in the same memorandum of 7 March 1994:

> "... the Government of the Federal Republic of Yugoslavia is of the opinion that State property consists of all movable and immovable property and financial claims of enormous value generated in a non-commercial manner since the establishment of the Yugoslav State, by joint collection and allocation of resources on the basis of Yugoslav State authorities' decisions, regardless of who is using these values today, and in which part of the former Socialist Federal Republic of Yugoslavia they are situated ..." 2/

The above implies that all former investments from federal budget and funds, which were largely made in the former associated labour organizations in the field of production, have created debts of these other successor States in which these organizations are now situated. And the Federal Republic of Yugoslavia, as the allegedly continuing State of the Socialist Federal Republic of Yugoslavia, considers itself as the main, if not the sole creditor.

Such an approach is first of all unsound in itself. It does not take into account the repayments of credits by former associated labour organizations raised from federal funds. It does not respect the amortization of values invested, or the present-day value of enterprises, beneficiaries of these credits or gifts, which depend primarily on their present profitability. If such an approach is admissible, which it definitely is not, the verification of all documents would take more than three years of intense work. A great amount of crucial documentation related to the enterprises was destroyed in the Serbian aggression against Bosnia and Herzegovina and Croatia.

Prompted by Ambassador Alf Jonsson, current president of the Working Group on Succession Issues, the Federal Republic of Yugoslavia has already produced a preliminary inventory with over 2,500 identified items on the foregoing basis. Only three of them relate to the property of the former Federal Army, the value of which is assessed by impartial consultants engaged by the European Community at about 60 billion United States dollars. This preliminary inventory does not

include any other items that were parts of the State property of the former Federation.

The point at stake, therefore, is not the State property of the former Federation to which the succession of States applies. This insistence on the definition of State property has as its sole purpose the obstruction of the process of negotiations. Never in history has such an approach been workable. The object of apportionment was and will remain so in the future the State property of the predecessor State such as existed on the date of the succession of States.

A possible approach designed to overcome this impasse in negotiations would be a proposal by a third party on the key to be applied in defining the proportions for apportionment of all assets of the former Federation between its successor States. When discussing the proportions for equitable division, the principle of equality of rights and duties requires that apportioned in the same ratio should be various kinds of what really was the State property of the former Socialist Federal Republic of Yugoslavia on one hand, and its non-allocated general debts on the other. That would prevent some successor States from expecting an excessive share in common property, expecting that somebody else will repay joint debts.

As principal victims of the aggression by the former Federal Army controlled by Serbia and Montenegro, Croatia and Bosnia and Herzegovina cannot agree to an overall settlement that would not take into account the reparations of war damages inflicted on them and their population. Therefore, the obstinate postponement of even tackling the problem of war damages in order to reach a consensus on the issues of State succession is a serious obstacle to efforts to agree on a general approach to the matter.

The future of the heavy weaponry with the former Federal Army may be a subject of special arrangements. But of the utmost importance is its seizure from the Federal Republic of Yugoslavia and the Serbian forces in Bosnia and Herzegovina, Croatia and Kosovo. There is no other way to prevent further killings, mutilations and terrorizing of civilian population or further destruction of property, which is subject to reparation under international law.

For almost two years the Federal Republic of Yugoslavia has participated with other successor States in drafting the "Single inventory of assets and liabilities of the Socialist Federal Republic of Yugoslavia as at 31 December 1990", within the working groups on economic and succession issues of the International Conference. Although keeping its general reservation about the appropriateness of the work in the groups, like other successor States, it did not hesitate to submit reservations to the claims raised by other successor States, which it had really done. Other successor States have cooperated with it in good faith, constantly seeking solutions that would respect legal rights of all, including the rights of the Federal Republic of Yugoslavia.

The Federal Republic of Yugoslavia is by its former conduct estopped now to insist on its quite new and alternative "preliminary inventory", as a basis for all further negotiations. Nobody is entitled to encourage it to do so in the name of the International Conference on the Former Yugoslavia.

If the Federal Republic of Yugoslavia continues to hinder the negotiating process of State succession of the former Socialist Federal Republic of Yugoslavia, opinion No. 12 of the Arbitration Commission sets forth some universally agreed rules of international law.

The Federal Republic of Yugoslavia has proved its non-cooperation in many instances. As such, it is already in breach of its obligation from the fundamental rule in the process of State succession, to achieve an equitable result by negotiations and agreement, apart from other reasons for which the sanctions were imposed on it by the United Nations Security Council under Chapter VII of the Charter.

Cooperative successor States which, since the time they gained international recognition have sustained heavy losses, are entitled to take non-forceable counter-measures against the Federal Republic of Yugoslavia in accordance with international law. They are furthermore entitled to reach through an agreement among themselves a comprehensive equitable settlement, reserving the legal rights of the Federal Republic of Yugoslavia.

Although their agreement will be res inter alios acta in relation to the third States, the third States will be under legal obligation not to dispose of the State property of the former Socialist Federal Republic of Yugoslavia in a manner other than that provided in such an agreement. Furthermore, third States will not be entitled to treat the Federal Republic of Yugoslavia as a legitimate owner of the property that it keeps in illegal possession.

Finally, the process of succession of States, especially in respect of State property and debts involves sensitive material rights and interests of all successor States. These relations are very much like commercial creditor-debtor relations. The duty to repay a debt, or the duty of restitution of somebody else's property, does not depend on the good will of the party holding it. These relations cannot be settled by insisting on a consensus, cooperation and good will of all parties in the process of State succession at any price.

Whoever encourages the Federal Republic of Yugoslavia to go ahead with the preparation of its inventory on the aforesaid basis, protracts the war, human suffering and material damage on the soil of the former Yugoslavia.

From all the above it results that the succession of States applies only to property, rights and interests that were owned by the former Yugoslav Federation at the specific dates of succession of States for each successor State, according to federal laws in force at those dates.

Gifts and credits from central funds, invested in natural and juridical persons under Yugoslav laws, were not property, rights and interests, of the former Federation unless based on contracts valid at the respective date of succession of States, and unless the party of these contracts was the Federation itself as a juridical person.

For further definition of State property of the former Socialist Federal Republic of Yugoslavia, article 8 of the 1983 Vienna Convention and all respective opinions of the Arbitration Commission, especially its opinion No. 14, should apply.

Furthermore, respect of the fundamental legal principle of equality of rights and duties of all States in respect of international law requires that various kinds of State property of the former Socialist Federal Republic of Yugoslavia on the one hand, and its non-allocated general debts on the other, should be apportioned in the same ratio. All allocated or localized foreign debts should go to the successor State on whose territory they were invested.

Notes

1/ This statement is elaborated in more detail in an interview by the head of the delegation of the Federal Republic of Yugoslavia, Academician Kosta Mihajilović, published in the Belgrade daily Politika on 17 March 1994, p. 7:

> "The difference between succession and continuity is tremendous, with far-reaching consequences on the mode of final settlement of accounts. As a predecessor State, which keeps continuity, Yugoslavia has agreed to set apart a fraction of its property, which it yields to newly established successor States according to the principle of equity. At this stage, when the question of (dis)continuity is still unresolved, this can be considered as an act of good will. In case the view that the Socialist Federal Republic of Yugoslavia has dissolved be adopted as a starting-point, then the Federal Republic of Yugoslavia (Serbia and Montenegro) shall be considered but one of the successor States. Quite a number of people, even experts, do not observe this difference but maintain that Yugoslavia could at the same time be a predecessor State and a successor State."

Such a conclusion shows utter disregard for the basic principle of equality of rights and duties of all parties in the process of State succession.

2/ Along the same lines is the definition of State property of the Socialist Federal Republic of Yugoslavia in article 2 of the draft agreement on succession between the Federal Republic of Yugoslavia and the Successor States proposed on 4 May 1993:

> "1. State property of the Socialist Federal Republic of Yugoslavia means the property, rights and interests of the federal institutions, property of institutions of the federal units and those parts of the so-called 'social property' which have in their totality or in part been created by or financed from the federal budget and other federal funds or from those of two or more federal units ...
>
> "3. The net value of the State property of the Socialist Federal Republic of Yugoslavia shall be determined on the basis of subsuming to permanent prices of 31 December 1990 ..."